In the High Court of Judicature at Madras

Dated: 26.03.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S. TAMILVANAN

Writ Petition No.9687 of 1998

P.S. Mathar ..Petitioner

..vs..

1.The Commandant
CISF Unit
Chennai Port Trust
Chennai 600 001.

2.Assistant Commandant (Admn.)
Chennai Port Trust, CISF
Chennai 600 001. ..Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari as stated therein.

For Petitioner : Mr. M. Md. Ibrahim Ali

For Respondents : Mr. S. Udayakumar, ACGSC

..

ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the first respondent dated 19.05.1998, confirming the order of the second respondent dated 26.02.1998, the petitioner has filed the above writ petition.

2. According to the petitioner, he joined in the Central Industrial Security Force (in short, "CISF") on 05.04.1975 as Constable. He served all over India for the past 22 years. At the relevant time, he was working as Head Constable in Madras. On 11.02.1998, the second respondent, Assistant Commandant (Admn.), Chennai Port Trust, issued the following memorandum proposing to take action under Rule 35 of CISF Rules.

> "That CISF No.753260120 HC/GD P.S. Mathar of this unit (H.Qrs.Coy) was detailed to proceed on election duty w.e.f. 28.1.98 and direct to report to Coy.Comdr.No.421

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vide Letter No.E-42099/CISF/CPT/GPE/98-105 dated 28.1.98. But HC/GD P.S. Mathar refused to accept/receive the above said official letter/documents which is serious matter and it shows indisciplined and insubordination on his part and remained absent without leave w.e.f. 29.1.98 to 8.2.98 and reported for duty on 9.2.98. This displays an act of insubordination and act of indiscipline and violation of lawful orders. Hence the charge".

3. On receipt of the above charge memorandum, the petitioner submitted his representation on 18.02.1998, denying the charges levelled against him. The original authority not satisfied with the explanation offered, awarded punishment of stoppage of increment for one year, which will not have the effect of postponing his future increment.

4. Aggrieved by the order of the original authority, the petitioner preferred an appeal to the appellate authority, viz., Commandant, CISF Unit, Chennai, first respondent. By order dated 19/20.05.1998, the appellate authority, confirmed the order of the original authority and dismissed the appeal; hence, the present writ petition.

5. The learned counsel for the petitioner submitted that in view of the detailed explanation with reference to both the charges, the respondents ought to have accepted the same and the punishment of stoppage of increment for one year is not warranted.

6. With regard to the first charge, the explanation of the petitioner is, since the memorandum dated 17.01.1998 was typed in Hindi and he was not able to follow, he requested to serve copy of the same in English. In the same representation, he also highlighted his family circumstances and according to him no order has been passed on his representation dated 24.01.1998, submitted to the first respondent. He also denied the first charge and according him the alleged letter dated 28.01.1998 was not at all made known to him and no effort had been taken to serve the same on him. Further, he denied the allegation that he refused to receive letter dated 28.01.1998. On the other hand, in the explanation he asserted that he never disobeyed the orders of his superiors for the past 23 years of service.

7. Coming to the second contention that for his absented period, viz., 29.01.1998 to 08.02.1998, he obtained medical certificate from Stanley Medical College Hospital at Madras, instead of from Chennai Port Trust Hospital. It is the case of the petitioner that on the advise of the Doctors he was taking medical rest and he produced a certificate issued by the Doctor at Stanley Medical College Hospital. The complaint of the Department was that, he has to get a medical certificate only from Chennai Port Trust Hospital. In respect of specific quarry from us, it was not brought to our notice that any specific circular or instruction to the effect that the personnel have to get treatment and secure certificate only from Chennai Port Trust. In the absence of the same and in view of

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the fact that the Stanley Medical College Hospital is under the control of State Government, we are of the view that there is no valid reason to disbelieve the certificate issued by the Stanley Medical College Hospital.

8. On going through the explanation of the petitioner with regard to both the charges, we are of the view that both the original and appellate authority failed to consider the same in proper perspective. When there is acceptable reason, it is, but proper on the part of the authorities to accept the same. We are satisfied that both the authorities failed to consider and accept the explanation of the petitioner and we feel that the ultimate punishment is not warranted.

Under these circumstances, the impugned orders of the original and appellate authority are quashed and the writ petition is allowed. No costs.

kh

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commandant
CISF Unit
Chennai Port Trust
Chennai 600 001.

2.Assistant Commandant (Admn.)
Chennai Port Trust, CISF
Chennai 600 001.

+1 cc to Mr.M.MD.Ibrahim Ali, Advocate Sr.No.19339.

+1 cc to S.Udayakumar, Sr.C.G.S.C., Sr.No.19091.

LA(CO)'
dcp/11.4.07

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